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Department of Transportation
Federal Aviation Administration
14 CFR Part 120
Docket No. FAA-2012-0688; Notice No. 12-04
RIN 2120-AK01

RE: Docket No. FAA-2012-0688 Combined Drug and Alcohol Testing Programs

The Aircraft Owners and Pilots Association (AOPA), on behalf of more than 400,000 general aviation pilots and members nationwide, offers the following input to the Federal Aviation Administration (FAA) regarding the "Combined Drug and Alcohol Testing Programs" notice of proposed rulemaking (NPRM). On July 2, 2012, the FAA issued this NPRM which would allow air carrier operators and commuter or on-demand operators that also conduct air tour operations to combine the drug and alcohol testing required for each operation into one program.

AOPA supports the proposed rulemaking to allow the combination of drug and alcohol testing programs for Part 121 or 135 air carriers that also conduct air tour operations under §91.147. Combining two drug and alcohol testing programs into one would increase efficiency and provide significant cost savings to applicable operators. AOPA also supports a clarification of regulatory language regarding Letters of Authorization but recommends revised language for one minor amendment to Part 120. However, AOPA is concerned with the FAA's intended enforcement policy should an operator using a combined drug and alcohol testing program be issued a violation.

Combined Drug and Alcohol Testing Programs is Cost-Effective

Allowing Part 121 and Part 135 air carriers that also conduct air tour operations under §91.147 to combine the two required drug and alcohol testing programs into one program is a more cost-effective and efficient manner of handling drug and alcohol testing. Air tour operators conducting flights under §91.147 currently must obtain a Letter of Authorization to conduct these operations while Part 120 requires air tour operators to "register with the FAA" to establish the company's drug and alcohol testing program. In practice, a Letter of Authorization establishes the drug and alcohol testing program. Part 121 and 135 air carriers must receive an Operations Specification for a Drug and Alcohol Misuse Prevention Program to establish the drug and alcohol testing program. After these two authorizations – either Letter of Authorization for a §91.147 air tour operator or Operations Specification for a Part 121 or 135 air carrier - are received, the drug and alcohol testing program requirements are exactly the same.

Often the same employees and same equipment are used for the air carrier operations and the air tour operations, resulting in the same individuals being tested under both programs. This creates an obvious time inefficiency as well as an unnecessary financial burden for these types of operators. Combining the two testing programs would maintain the same level of safety provided by current regulations while providing both operators and the FAA with substantial time and cost savings.

AOPA supports this portion of the NPRM without revision.

Standardization of Language

Current §120.117 contains requirements for drug and alcohol testing as it applies to air tour operators conducting operations under §91.147. §120.117 currently states an operator must "register with the FAA" prior to conducting commercial air tour operations. Existing §91.147 requires the air tour operator to hold a Letter of Authorization prior to beginning commercial air tour operations. This inconsistency in language has led to confusion among air tour operators and FAA inspectors. This NPRM would standardize the language, revising §120.117 to state the operator must "obtain a Letter of Authorization" prior to beginning commercial air tour operations.

AOPA supports this portion of the NPRM without revision.

Inadvertent Omission of On-Duty Alcohol Use Consequence

The FAA has identified an error in the 2009 Drug and Alcohol Testing Program final rule in which the consequence for on-duty alcohol use was omitted. This NPRM would amend §120.221, "Consequences for employees engaged in alcohol-related conduct" to state:

> (b) An employee who violates §§120.19(c) or 120.37(c), or who engages in alcohol use that violates another alcohol misuse provision of §§120.19 or 120.37, and who had previously engaged in alcohol use that violated the provisions of §§ 120.19 or 120.37 after becoming subject to such prohibitions, is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

This proposed amendment adds sub-section (c) to references to both §§ 120.19 and 120.37. §§ 120.19(c) and 120.37(c) both refer to on-duty alcohol use.

AOPA believes this language does not completely clarify the issue. It seems the FAA means §120.221 to say that a single instance of on-duty alcohol use is cause for permanent removal from service, while two violations of other activities listed in §§120.19 or 120.37 are necessary to cause permanent removal from service. However, the regulation as proposed above does not make that intention explicitly clear. AOPA suggests amending §120.221(b) to state:

(b) *Preclusions from Performing Safety-Sensitive Duties*
(1) An employee who violates §§120.19(c) or 120.37(c) is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.
(2) An employee who engages in alcohol use that violates another alcohol misuse provision of §§120.19 or 120.37, and who had previously engaged in alcohol use that violated the provisions of §§120.19 or 120.37 after becoming subject to such prohibitions, is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

Dividing the two scenarios – a single instance of on-duty alcohol use or two other alcohol-related violations – into separate sub-sections of the regulation would provide needed clarification on this safety-critical issue.

Intended Enforcement Policy

The preamble of the NPRM discusses the FAA's intended enforcement policy regarding combined drug and alcohol testing programs. If an operator chooses to combine a Part 91 air tour operator drug and alcohol testing program with a Part 121 or 135 air carrier drug and alcohol testing program and fails to comply with the approved program, the Part 121 or 135 air carrier certificate will be subject to enforcement action even if the pilot whose testing is in question was only used for §91.147 air tour flights. While AOPA understands this is perhaps the easiest way to assess penalties, the FAA does have enforcement recourse against a Part 91 air tour operator since these operators are required to hold a Letter of Authorization. It should not be difficult to determine whether a particular pilot conducted Part 135 charter operations or Part 91 air tour operations and then assess penalties against the appropriate operator.

AOPA supports the overall concepts of this NPRM and appreciates the FAA's efforts to streamline drug and alcohol testing requirements while providing cost-effective changes to applicable regulations but requests the FAA reconsider its intended policy regarding enforcement of this regulation.

Sincerely,

Rob Hackman
Vice President, Regulatory Affairs
Aircraft Owners and Pilots Association